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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation in East Timor

Report of the Secretary-General

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Introduction

1. At its fifty-first session, the Chairman of the Commission on Human Rights made a statement on 1 March 1995, announcing what had been agreed by consensus by the Commission on the situation of human rights in East Timor (see E/1995/23-E/CN.4/1995/176, para. 590). By that statement, the Commission, inter alia, welcomed the Secretary-General's intention to facilitate and offer the necessary arrangements for the convening of an all-inclusive intra-East Timor dialogue. The Commission also requested the Secretary-General to keep it informed on the situation of human rights in East Timor, which it would consider at its fifty-second session.

2. The present report has been prepared in response to the requests contained in the above-mentioned statement.

3. Section I of the report contains an update on the good offices activities of the Secretary-General concerning the question of East Timor; section II contains a summarized description of action taken by various thematic special rapporteurs and working groups of the Commission. Annex I of the report contains information provided by the Indonesian Government; annex II contains information provided by the Portuguese Government; annex III contains a summary of reports and other pertinent material provided by non-governmental sources.

4. The attention of the Commission on Human Rights is also drawn to the progress report of the Secretary-General on the question of East Timor (A/50/436) and to the report of the High Commissioner for Human Rights on his visit to Indonesia and East Timor (E/CN.4/1996/112).

I. UPDATE ON THE GOOD OFFICES ACTIVITIES OF THE SECRETARY-GENERAL CONCERNING THE QUESTION OF EAST TIMOR

5. Since the last session of the Commission, the Secretary-General has held two new rounds of talks with the Foreign Ministers of Indonesia and Portugal on the question of East Timor. The meetings, the sixth and seventh since the resumption of the trilateral talks in 1992, were held in Geneva on 9 July 1995 and in London on 16 January 1996, respectively. In between the ministerial sessions, discussions between the two sides have continued at the Permanent Representative level with the participation of the representative of the Secretary-General.

6. The series of confidence-building measures agreed upon by the two sides in earlier rounds having succeeded in establishing a conducive atmosphere, the discussions have now entered a more substantive and confidential phase. Beginning at the sixth round, the two Ministers, without prejudice to their respective positions of principle on the political status of East Timor, have discussed issues identified by the Secretary-General regarding possible avenues to achieving a just, comprehensive and internationally acceptable solution. These substantive issues, which both sides agreed to discuss in conjunction with one another, related to an eventual framework for a solution and other connected issues, inter alia, the preservation and promotion of the cultural identity of the East Timorese people and bilateral relations between Indonesia and Portugal.

7. Due consideration was given to human rights issues at these meetings. The sixth round focused on the implementation of the Chairman's statement at the fifty-first session of the Commission on Human Rights, the importance of which was stressed. At the seventh round, the Ministers welcomed the visit of the United Nations High Commissioner for Human Rights to Jakarta and East Timor in December 1995 in the context of the implementation of the Chairman's statement.

8. Prior to the July meeting in Geneva, and pursuant to an earlier understanding, an all-inclusive intra-East Timorese dialogue was held at Burg Schlaining, Austria, from 2 to 5 June 1995. As was indicated in last year's report (E/CN.4/1995/72), the dialogue is not a forum for addressing the political status of East Timor, nor does it represent a parallel negotiating track, but is meant to provide a venue for the East Timorese to explore ideas of a practical nature that might have a positive impact on the situation in East Timor and assist in the establishment of an atmosphere conducive for the achievement of a solution.

9. The Secretary-General facilitated the meeting, which was hosted by the Government of Austria and financially supported with contributions from a number of countries. Thirty East Timorese of all shades of political opinion from inside and outside the territory participated in their personal capacities at the four-day meeting which was also attended by two United Nations observers. The meeting discussed a broad range of issues and concluded with the adoption by consensus of the "Burg Schlaining Declaration", which inter alia, reaffirmed "the need to implement the necessary measures in the field of human rights and the various areas with a view to promoting peace, stability, justice and social harmony" and "the necessity for social identity of the people, including tradition, religion, history and language, as well as the teaching of Tetun and Portuguese".

10. The Secretary-General was encouraged by the overall constructive atmosphere of the meeting, the first such comprehensive gathering of East Timorese personalities, and by the sincere efforts of the participants to find common ground and put forward proposals that could contribute to the improvement of conditions in the Territory and assist in the search for a solution. The positive and moderating influence played by Bishop Carlos Filipe Ximenes Belo was of particular importance in this regard.

11. The Foreign Ministers of Indonesia and Portugal have welcomed the convening of the intra-East Timorese dialogue. A new session of the dialogue with the same participants and terms of reference will be held from 19 to 22 March 1996 also at Burg Schlaining.

12. The eighth round of talks between the Foreign Ministers of Indonesia and Portugal under the auspices of the Secretary-General is scheduled to take place in Geneva on 27 June 1996.

13. The Secretary-General will persist in his efforts aimed at finding a just, comprehensive and internationally acceptable solution to the question of East Timor. Without underestimating the difficulties of this task, he is encouraged by the stated desire of the parties to find a negotiated solution despite the wide chasm between their basic positions of principle. In this

process, the Secretary-General will continue to consult and seek the views of East Timorese groups and personalities of all shades of political opinion.

II. ACTIONS TAKEN BY SPECIAL RAPPORTEURS AND WORKING GROUPS OF THE COMMISSION ON HUMAN RIGHTS CONCERNING EAST TIMOR

A. Action taken by the Special Rapporteur on the question of torture

14. Information regarding the action taken by the Special Rapporteur on the question of torture with regard to East Timor is described in the report of the Special Rapporteur to the Commission (see E/CN.4/1996/35/Add.1, paras. 348-361).

15. During 1995 the Special Rapporteur transmitted to the Government of Indonesia five urgent appeals on behalf of East Timorese who were allegedly beaten or subjected to torture and ill-treatment by police and/or security agents. The Government denied these allegations. The Special Rapporteur also transmitted to the Government a communication concerning four East Timorese who had allegedly suffered ill-treatment.

B. Action taken by the Special Rapporteur on extrajudicial, summary or arbitrary executions.

16. Information regarding the action taken by the Special Rapporteur with regard to East Timor is described in the report of the Special Rapporteur to the Commission (E/CN.4/1996/4, paras. 245, 249, 252-254 and 257). In his observations, the Special Rapporteur noted that he remained deeply concerned about the ongoing unrest and violence in East Timor. He also regretted that no reaction had been received from the Government of Indonesia with regard to the recommendations made upon his visit to Indonesia and East Timor in 1994.

C. Action taken by the Working Group on Arbitrary Detention

17. Information regarding the action taken by the Working Group on Arbitrary Detention with regard to East Timor is described in section II.C, "Field missions", of the report of the Working Group to the Commission (E/CN.4/1996/40, paras. 24-30). The Working Group described its so-far fruitless efforts to receive an invitation from the Government of Indonesia to visit Indonesia and East Timor, in connection with the Group's interim decision No. 34/1994 concerning Xanana Gusmao.

D. Action taken by the Working Group on Enforced or Involuntary Disappearances

18. Information regarding the action taken by the Working Group on Enforced or Involuntary Disappearances with regard to East Timor is described in the report of the Working Group to the Commission (E/CN.4/1996/38, paras. 253-254). The Working Group noted that during 1995 it received no information from the Government of Indonesia concerning the cases of some 200 disappearances which were related to the incident at the Santa Cruz cemetery in Dili, East Timor, on 12 November 1991, as well as some other cases which occurred in 1992.

Annex I

INFORMATION PROVIDED BY THE INDONESIAN GOVERNMENT

On 10 July 1995 the Permanent Representative of the Republic of Indonesia to the United Nations addressed a letter to the Secretary-General which was circulated to the General Assembly as document A/50/280.

By letter dated 22 January 1996 the Permanent Representative of the Republic of Indonesia to the United Nations Office at Geneva transmitted to the Assistant Secretary-General for Human Rights a document entitled "Notes on the Implementation of the Chairman's statement of the fifty-first session of the Commission on Human Rights concerning the human rights situation in the Province of East Timor, Indonesia", which reads as follows:

"1. On 28 February 1995, the Chairman of the fifty-first session of the Commission on Human Rights made a statement announcing what had been agreed by consensus by the Commission on the situation of human rights in East Timor. In that statement, the Commission, inter alia, requested the Secretary-General to keep it informed on the situation of human rights in East Timor, which it would consider at its fifty-second session.

2. The present document has been prepared to provide the relevant information to the Secretary-General in responding to the requests contained in the above-mentioned statement.

INVESTIGATION OF THE LIQUICA INCIDENT

3. The Government of Indonesia immediately conducted an investigation on the allegations of human rights violations in the Liquica regency. It established that, contrary to the allegations, the six people who were killed were indeed guerrillas who were involved in an ambush against a military patrol, not civilians. Furthermore, the Government also found that irregularities and misconduct had taken place. An Officers' Honour Council was then set up to further investigate the case.

4. The findings of the Council, among others, were recommendations to court-martial the officers involved on criminal charges. Two officers, First Lieutenant Jeremiah Kasse and First Private R. Maubere, were then arraigned on 7 February 1994. The verdicts for the two were handed down on 19 June 1995. Second Lieutenant Jeremiah Kasse was sentenced to four and half years imprisonment and dishonourably discharged from military service. First Private Rusdin Maubere was sentenced to four years imprisonment and dishonourably discharged from military service. The Indonesian Government is indeed committed to uphold the law in dealing with human rights and violators of military discipline and to prevent the recurrence of such human rights abuses and violations in the future.

UNDERTAKINGS TO PROMOTE HUMAN RIGHTS IN EAST TIMOR

5. During the 1995 period, the human rights situation in East Timor was unfortunately marked by incidents whereby East Timorese people burned down two Protestant churches, namely the Hosanna Christian Church and the

Protestant Church 'Sidang Jemaat Alah', two Islamic places of worship, an orphanage and several markets. The incidents were caused by several unrelated circumstances but were capitalized upon by certain irresponsible elements who circulated leaflets distorting the facts. No less than the Bishop of the Dili Diocese, Mgr. Carlos Filipe Ximenes Belo, on the occasion of the fiftieth anniversary of Balide Church, east of Dili, expressed his regret at the violence by the East Timorese youths and stated that this was not in line with Catholicism. On the other hand, Jose Ramos Horta, the self-claimed leader of the East Timorese, who enjoys full support from certain quarters, stated on CCN on 31 October 1995 that: 'Indonesia should stop attacking the Catholic church of East Timor. In the last few weeks they have engaged in a sort of crusade against the people of East Timor and the Catholic church.' It is clear who the irresponsible elements are.

6. In order to prevent the recurrence of such incidents and maintain the harmony of inter-religious and inter-ethnic life, the Government of Indonesia has set up a Forum for Communication and Consultation among the religious leaders in East Timor on 26 October 1995. The establishment of such a forum was previously proposed by the House of Representatives and the National Commission on Human Rights aimed at promoting inter-religious peace and harmony in East Timor. The inauguration of the forum was attended by, among others, the Indonesian Minister for Religious Affairs, the Ambassador of the Holy See to the Republic of Indonesia, the Bishop of Dili and other prominent figures from various religions in Indonesia.

7. Those irresponsible elements have also committed gross violations of human rights in East Timor. On 1 September 1995 they raided a village in Baucau and killed three villagers, namely M. Adil, Martinho and Marito Ximenes. The killing of innocent civilians showed that those irresponsible separatist elements had lost public support. The fact that the separatist elements were also losing faith was marked by the surrender of two self-claimed commanders of the separatist armed groups. In line with the policy of the Government of Indonesia, their decision to desist from engaging in violent anti-government activities has made them eligible for clemency from the Government of the Republic of Indonesia, as stipulated in the 1978 Presidential Amnesty.

8. In the attempt to eliminate conduct unbecoming of members of the security forces as well as to uphold the law, the Government of Indonesia has always taken necessary and stern measures. Such a case in point occurred when the Government had 46 military officers brought before the Dili Military Court on various disciplinary as well as criminal charges.

9. It is important to note that the National Commission on Human Rights has decided to set up a branch in Dili, East Timor, and is currently conducting technical and logistical preparations. This independent body will also serve as a source of reliable first-hand information to verify many false and uncorroborated allegations or incitements provoked by irresponsible separatist elements.

PERSONS STILL UNACCOUNTED FOR

10. The Government of Indonesia has made every possible effort and deployed all the means at its disposal to satisfactorily resolve all remaining issues related to the Dili incident of 12 November 1991. In this connection, the Indonesian Government has worked closely with the United Nations Secretary-General and kept him informed of all available steps taken to redress those issues. One particular problem in this matter is that many of those who were involved in the violent demonstrations leading to the incident have not come forward or have left the country clandestinely.

COOPERATION WITH THE ICRC

11. Regarding the East Timorese political prisoners both in East Timor and in other places, the Indonesian Government has continued to allow the ICRC regular access to them. In this regard, the ICRC also visited East Timorese detainees and prisoners on Java, including the former member of a security disturbance group, Mr. Xanana Gusmao, at Cipinang prison in Jakarta. The latest visit was conducted on 5 October 1995. During their visits, the ICRC delegates were granted free access to meet people they wanted to meet both in East Timor and other parts of Indonesia. The Indonesian Government noted with appreciation the assistance given by the ICRC to further improve the living conditions of the prisoners, including sanitation in the prisons. The Indonesian Government and the ICRC have also worked closely to clarify inaccurate information regarding prisoners. For example, there have been allegations that three inmates in Becora prison, East Timor, were dying of hunger. The ICRC and an official from the Department of Justice made an on-the-spot visit and found the allegation to be untrue, for the alleged dying inmates were jogging.

GREATER ACCESS TO EAST TIMOR

12. Since the previous session of the Commission, the following personalities and delegations have paid visits to the province:

(a) The United States Assistant Secretary of State for Democracy, Human Rights and Labor, John Shattuck, and Senator Charles S. Robb, accompanied by the United States Ambassador to Indonesia, H.E. Robert Barry, on 11-14 April 1995;

(b) Two members of parliament of the Federal Republic of Germany, Mr. Rainer Eppelman and Mr. Volker Neuman, on 22-27 May 1995;

(c) A delegation from the United States Congress, led by the Hon. Bill Archer, on 11-12 August 1995;

(d) A delegation of 13 members of the European Parliament, under the auspices of the European Parliament-Indonesia Friendship Association (EPIFA), on 10-19 August 1995. The group comprised representatives of

various political parties from the EU member countries, such as the Christian Democratic Party, Conservative Party, Liberal Party and Social Democratic Party;

(e) Ambassadors and representatives of various embassies and international organizations accredited to Indonesia;

(f) Scores of foreign journalists, including Jeremy Wagstaff (Reuters), James Edward Della Giacoma (AFP), Michel Bret Maher and David John Henry (ABC), Patrick John Reynell Walters (The Australian), Jose Sarni Ocampo (Reuters - July 1995), Nobuo Fukuda (Asahi Shimbun - July and October 1995), Philip W. Shenon (New York Times - July 1995), David Jenkins (Sydney Morning Herald - July 1995), Ivan Lopes de Goody (Journal de Brazilia - September 1995), and Luis Pires (RTP-Portugal - January 1996).

COOPERATION WITH UNITED NATIONS HUMAN RIGHTS MECHANISMS

13. At the invitation of the Government of Indonesia, the High Commissioner for Human Rights, H.E. José Ayala Lasso, visited Indonesia, including East Timor, from 2 to 7 December 1995. During the visit, the High Commissioner was granted free access to any place and anyone he desired to meet. Apart from his mission to observe closely the human rights conditions and the overall process of national development in Indonesia, the High Commissioner's visit was regarded by the Government of Indonesia as a significant contribution to its ongoing efforts to promote public awareness regarding the importance of the promotion and protection of human rights.

14. It is particularly important to note that by the end of his six-day visit, the High Commissioner and the Indonesian Minister for Foreign Affairs had reached several agreements in principle in the effort to enhance cooperation in the field of human rights between the Government of the Republic of Indonesia and the High Commissioner's office and other United Nations human rights mechanisms. In this context, both parties agreed, inter alia, to follow up the current 'Memorandum of Intent' so that it could become a more practical 'Memorandum of Agreement'.

15. With regard to other various human rights mechanisms, the Government of Indonesia has always expressed its willingness to continue to cooperate with them. The Government of Indonesia has, for instance, replied to many communications addressed to it, be it in the form of urgent appeals or of the 1503 procedure.

CONFIDENCE-BUILDING MEASURES

16. Those steps are also taken in the light of implementing the agreed confidence-building measures in letter and in spirit. Indonesia will continue to do so as a means of fostering an atmosphere propitious to the achievement of a just, comprehensive and internationally acceptable settlement and hopes that all parties to the Chairman's statement will naturally do the sane.

OTHER DEVELOPMENTS

17. Along with improving the socio-political situation and development in East Timor, the Government of Indonesia decided to withdraw two more battalions from East Timor on 5 September 1995.

18. In line with the programme of the Indonesian Government to address the problem of unemployment in East Timor, about 2,000 people of East Timorese origin have been recruited for civil service posts. After undergoing vocational training programmes, 1,000 will be assigned to the local government of East Timor province while the others will be sent out to various provinces in Indonesia. For the same purpose, in the fiscal year 1996/1997, around 2,000 people (consisting of 1,000 from the province of East Timor, 500 from the province of Irian Jaya and 500 from the province of East Nusa Tenggara) will be specifically recruited to be employed as teachers and paramedics throughout Indonesia.

VISIT OF THE EUROPEAN-INDONESIAN PARLIAMENTARY FRIENDSHIP ASSOCIATION TO INDONESIA FROM 10-18 AUGUST 1995

A delegation from the European-Indonesian Parliamentary Friendship Association (EPIFA), comprising 14 members of the European Parliament, visited Indonesia from 10-18 August 1995. During their visit, they went on an extensive tour to Batam, Bali, Ambon, East Timor, Kalimantan, and Kupang. With regard to their visit to East Timor on 15 August 1995, the Secretary-General of EPIFA, who led the delegation, stated that the main aim of visiting East Timor was 'to see and verify for themselves the world opinions about East Timor'.

Upon their visit, the Secretary-General of EPIFA told the press that 'the changes in East Timor in the last 19 years are quite extraordinary. It can no longer be denied by anyone, including Portugal, which still refuses to recognize the achievements in East Timor, that the province's economic, social and political life is developing quite well'. He also stated that 'the international community's perception of the presence of the Indonesian armed forces is quite distorted. We found that the role of the military here is very different from the prevailing impressions abroad, particularly with regard to their numbers. I believe they are here to assist, not to wage war'.

On 16 January 1996, EPIFA distributed its first newsletter of 1996 which also contained information on East Timor. Paragraph 5 of the newsletter, inter alia, stated that 'To finish this first Newsletter of 1996 with humoristic note: the United States Public Relations Firm, Edelman, offered its services to Indonesia to upgrade its prestige in the international community in general and its standing on human rights in particular. Nothing special, were it not that Edelman (Nobleman in English!) mentioned in his terms of reference his successful operation against Indonesia, hired by Portugal to do so ... In August 1994, Edelman was retained by the Foreign Ministry of Portugal to help increase awareness of Indonesian human rights abuses in the former Portuguese colony of East Timor. Edelman was charged with raising the visibility of East Timor and conveying Portugal's position to the media, the

Administration, and the Congress in light of President Clinton's participation in the Asia-Pacific Economic Cooperation Summit in Jakarta, Indonesia ... Of course Indonesia declined its offer of this American mercenary changing from one client to its victim. Unlike Portugal, Indonesia does believe in its own Information Services and Embassies all around the world to publish the real truth. Human rights are too important to be abused in a commercial campaign of a professional United States PR-firm, who does not care whether to fight for or against violation of human rights.'

PRESS RELEASE OF THE DEPARTMENT OF FOREIGN AFFAIRS OF THE REPUBLIC OF INDONESIA
No. 56/PR/XII DATED 29 DECEMBER 1995

Timorese patriots go home

Ten Timorese, among them patriots who revolted against the injustice and oppression inflicted by the Portuguese colonial regime, arrived in Jakarta on 3 January 1996. Armindo Soares Amaral, Venacio da Costa Soares, Evaristo da Costa and Domingos Soares, together with their families, returned home from Lisbon after being exiled by the Portuguese Government for their involvement in the 4 June 1959 rebellion. The patriots had expressed their preference to be integrated with Indonesia rather than live under colonial rule.

The Timorese took arms against the Portuguese colonials in Viqueque, Uatolari and Uatokarbau, where approximately 500 people were gunned down in less than a week, and 68 patriots imprisoned and deported to Angola, Mozambique and Portugal. In the 1960s, 45 of them were released from prison and allowed to return to East Timor.

The exiles had repeatedly appealed to the Portuguese Government to let them return home, both before and after the integration of East Timor with Indonesia in 1976, but were repeatedly turned down. Their endeavours were rewarded when on 23 October 1994, Ambassador Lopes da Cruz conveyed their appeal to President Soeharto, who then agreed to facilitate their homecoming with the technical assistance of the ICRC.

THE RECENT FLOWS OF EAST TIMORESE TO PORTUGAL

On humanitarian considerations, the Government of Indonesia allowed 48 East Timorese, who initially had failed to seek asylum at several foreign embassies in Jakarta, Indonesia, to leave for Portugal during the second half of 1995. It is important to note that in accordance with international law, there were no valid grounds whatsoever supporting these requests for political asylum since these people were not being persecuted by the Government. In fact, the Government does not have any files on them. That their request for political asylum was groundless seems to have been well understood and shared by the embassies, into which they entered forcibly, as all those embassies rejected the Timorese youths' request.

At the same time, some East Timorese who left the country in the same manner in 1994 have expressed their wish to return home to Indonesia because the promises made to them were not kept and the dream of, at least, equal treatment was never materialized. Recently, the Sueddeutsche Zeitung, a Munich-based newspaper, has published an article to that effect, which was prepared after two months of research by the journalist concerned. Among other things, the newspaper reported that the incoming flows of East Timorese to Portugal seemed to have become a fashion, with East Timorese breaking into foreign embassies in Jakarta and requesting political asylum before eventually leaving for Portugal. Once in Portugal, they are housed in shanty lodgings and receive 170 deutsche mark. They can find no jobs and they have no future. They told the reporter that living in East Timor is in fact far better than living in Portugal."

By letter dated 25 January 1996 the Permanent Representative of the Republic of Indonesia to the United Nations Office at Geneva transmitted to the Assistant Secretary-General for Human Rights a statement issued by the Government of Indonesia entitled "The attempt to rewrite the history of East Timor continues", which reads as follows:

"Over the past 20 years, Portugal has been engaging in a massive disinformation campaign as evidenced in yet another misleading communiqué entitled 'Communiqué of the Foreign Affairs Ministry on behalf of the Portuguese Government on the Occasion of the Twentieth Anniversary of Eastern Timor's invasion' dated 7 December 1995.

The record of the circumstances in 1975 is well known and firmly held by Indonesia. In August 1975, Portugal, in a most irresponsible manner, simply packed up and abandoned East Timor, after allowing the situation in the territory to deteriorate to the point of civil war. Portugal was, in fact, guilty of practically instigating civil war by deliberately turning over its arms and ammunition to one particular minority group, FRETILIN, which to this day still enjoys Portugal's unflagging support. This development can be seen as the culmination of centuries of colonial neglect and a completely bungled decolonization process. This fact is well documented and established.

Independent observers hold the same view of the hard facts. Prof. Bilveer Singh of the Singapore Institute of International Affairs published a study on East Timor entitled 'East Timor - Indonesia and the world - myths and realities'. In his study he writes:

> 'While the British were the last colonial Power to leave the region when it ... handed sovereignty to Brunei ... in 1984, the Portuguese, in turn, entered the annals of Southeast Asian decolonization history as the Power that simply failed to carry out the transfer of power in an orderly fashion ... it was forced to abandon its colonial possession literally in retreat and dishonour. It was the unfolding of this tragic event, more than anything else, that was to launch what has come to be known as the "Timor Problem". It is the contention and conviction of this writer that it was in the failure and neglect of the successive Portuguese

> Governments to prepare the Timorese people for self-determination and the manner in which Lisbon abandoned its colonial possession that the roots of the present "Timor Problem" can be found ... As far as the international political dynamics of what East Timor is today. Portugal must go down in history as one of the most irresponsible colonial Powers as it abnegated and failed in its obligations to the people of Portuguese Timor whom it colonized for nearly 450 years. This is all the more important in view of the hypocrisy with which Lisbon has continued to maintain its status as the sole legal and political guardian of East Timor ...'

What is currently being rigorously trumpeted and pursued by Portugal, apparently at all costs, has put Portugal completely at odds with its own statement. Mario Soares, President of Portugal, wrote a book in 1972 entitled Portugal Amordacado. At page 475 the book reads: 'A especificidade do fenómeno Português em Africa, Macau e Timor é outro dos mitos criados pelo Estado Novo. Timor é uma 11ha Indonesia com bastante pouco a ver com Portugal' (sic), which means in English that the particularity of the Portuguese phenomenon in Africa, Timor and Macao is the myths that are created by the new Government. Timor is an Indonesian island with little to do with Portugal. Meanwhile, former Minister for Overseas Territories Almeida Santos, who was responsible for decolonization, stated in the United Nations General Assembly on 4 December 1974 that '... considering East Timor's underdeveloped conditions, it will be realized that a total and immediate independence is a dream'. As clearly expressed from its own communiqué, Portugal's statement is indeed confusing as the second sentence of the second paragraph reads: 'However, until now, Eastern Timor is still legally occupied, persistently challenging the values and fundamental principles which govern the relationships between nations and peoples.'

Portugal's hollow claim as the administering Power of East Timor is indeed without legal foundation. The International Court of Justice held, on 30 June 1995 by an overwhelming 14 to 2 votes, that it could not adjudicate upon the dispute referred to it by Portugal. The judgement of the ICJ contains, at least, two major legal pronouncements.

First, the restatement that the right to self-determination is one of the essential principles of contemporary international law. Having suffered under the yoke of European colonialism for centuries, Indonesia not only shares this legal opinion but is also constitutionally obliged to respect the right to self-determination, the single most important collective right.

Second, the ICJ refused to recognize the Portuguese claim as the administering Power of East Timor. Such was clearly stated in paragraphs 31 and 32 of the decision which, respectively, read:

> 'The Court notes that the argument of Portugal under consideration rests on the premise that the United Nations resolutions, and in particular those of the Security Council, can be read as imposing an obligation on States not to recognize any authority on the part of Indonesia over the Territory and where the latter is concerned,

to deal only with Portugal. The Court is not persuaded, however, that the relevant resolutions went so far' (emphasis added).

'The Court finds that it cannot be inferred from the sole fact that the above-mentioned resolutions of the General Assembly and the Security Council refer to Portugal as the administering Power of East Timor that they intended to establish an obligation on third States to treat exclusively with Portugal as regards the continental shelf of East Timor. The Court notes, furthermore, that several States have concluded with Indonesia treaties capable of application to East Timor but which do not include any reservation in regard to that Territory.'

Of four judges of the ICJ who submitted separate opinions, Judge Shigeru Oda and Judge Vereshchetin have concurred that the Court is indeed not persuaded by the Portuguese claim as the administering Power of East Timor.

Paragraph 10 of the separate opinion of Judge Shigeru Oda reads:

'On the other hand, the United Nations Charter contains a "declaration regarding Non-Self-Governing Territories" (Chapter XI) under which Member States which have or assume responsibilities for the administration of the colonial territories, accept as a sacred trust the obligation to promote the well-being of the inhabitants of these territories and, to this end, to transmit regularly to the Secretary-General statistical and other information of a technical nature relating to the territories. Portugal never supplied regular information on its own colonies scattered throughout the world and was not seen to have acknowledged that those colonies had the status of Non-Self-Governing Territories under the United Nations system.'

Paragraph 17 reads:

'... Portugal has not, since 1974, supplied any information or statistics as required under the United Nations Charter and under the 1960 "Declaration on Decolonization". The United Nations, when dealing with the problem of East Timor since 1976, has never indicated that Portugal should have the right and the duty to administer this area as a Non-Self-Governing Territory.'

Paragraph 18 reads:

'... there has not been any reason to assume that Portugal has, since the late 1970s and up to the present time, been entrusted with the rights and responsibilities of an administering Power for the Non-Self-Governing Territory of East Timor.'

In his separate opinion, Judge Vereshchetin rejects the Portuguese claim for lack of evidence. His opinion reads, among others:

'... However, without clear evidence to the contrary, the Court cannot easily dismiss the contention that, 20 years after the loss of effective control of the Territory, Portugal is not in a

position to act in the Court with full knowledge of the wishes and views of the majority of the East Timorese people. Even under normal circumstances, the denomination of an applicant State as administering Power does not diminish the necessity for the Court to check its claim by reference to the existing evidence of the will of the people concerned ... This would seem to suggest that the same requirements apply a fortiori to an administering Power, which for many years has not been in effective control of the territory concerned. Portugal also asserted that it represents the territory of East Timor in the domain of relations between States in close contact with the representatives of the people of East Timor.

'After all these statements, one might have expected Portugal's Application to be substantiated by credible evidence that Portugal had itself secured the support of its Application by the East Timorese people. However, neither in the written pleadings and annexed documents, nor in the course of the oral arguments and replies, has the Court been provided with such evidence ...'

Those are not words of contention by Indonesia. Those are the judgements and opinions of the International Court of Justice, the judicial arm of the United Nations, the judgements of which are enforceable by the Security Council. Those are the verdicts that were handed down upon Portugal's own legal quest. To whose opinion should the international community subscribe: the legal judgement and opinions of the highest order in the United Nations system or the Portuguese contention?

Finally, any attempt by Portugal to internationalize this lost cause of its own making on the so-called 'issue of East Timor' shall be rejected by the international community for the sake of the majority of the East Timorese who have solemnly declared themselves independent by opting to integrate with Indonesia, in full conformity with the relevant General Assembly resolutions, through the enactment of the Balibo Declaration."

By letter dated 1 February 1996, the Permanent Representative of the Republic of Indonesia to the United Nations Office at Geneva transmitted to the Assistant Secretary-General for Human Rights two notes entitled respectively "The opening of the branch office of the Indonesian National Commission on Human Rights in East Timor" and "More members of East Timorese separatist group captured or surrendered", which read as follows:

"THE OPENING OF THE BRANCH OFFICE OF THE INDONESIAN NATIONAL COMMISSION ON HUMAN RIGHTS IN EAST TIMOR

The Indonesian National Commission on Human Rights has inaugurated its branch office in East Timor on 24 January 1996. The office is currently finalizing the completion of staffing and logistical supplies and will commence its activities in March 1996.

The branch office will guarantee a more balanced inflow of information concerning allegations of human rights abuses found either by

the National Commission on Human Rights, the ICRC or the Roman Catholic Church. Its staff are only entitled to accept complaints, make observation and report to the head office in Jakarta.

The establishment of the branch office has received much support from various parties, including the Governor of East Timor, the Local Military Commander, the Bishop of Dili, the office of the District Attorney and the Dili Court of First Instance.

The branch office will not primarily receive complaints or reports from East Timorese. Clementino dos Reis Amaral, member of the Commission, stated at the inauguration that 'Our commitment is to serve everyone who feels their rights have been violated, regardless of their origin or religion'."

"MORE MEMBERS OF EAST TIMORESE SEPARATIST GROUP CAPTURED OR SURRENDERED

On 24 January 1996 at 19.00, 6 separatists were captured by the military patrol in the Saburai village of Maliana Kota, Bobonaro Regency. They are Antonio Metan, Bonivacio, Florindo, Leobano, Carlito and Adolfo. Meanwhile, the day before that in Maliana Regency, East Timor, yet another East Timor separatist leader, Gusmao Olivio, was captured. At the time of his arrest he carried with him a G-3 gun with scores of munitions.

As has been widely reported, in December 1995 three separatists surrendered of their own free will to the authorities. Those who surrendered were Maubanou, Matheus da Silva and Pascal Ximenes. On 18 January 1996, Vicenti Lourdes, one of separatist leaders who has been living in the forest for 20 years, also surrendered. Vicenti Lourdes told the press that many members of the separatist group are willing to surrender but that they are threatened to be shot by their own commanders. Many of them are forced to provide food for their leaders and at the same time they are instructed to fight with a minimum capability. Vicenti's decision is also based on the fact that many of his 'comrades' who live abroad have used him and his friends and never helped either them or their families, who reside abroad.

On 1 February 1996, another member of separatist group, Gilberto Diaz, surrendered to the authorities and has since been returned to his village in Ililapa, Lautem Regency.

All of these members of separatist groups add to those who previously surrendered and were captured, totalling 28 persons from April 1995 to February 1996. During this period, another 20 members of separatist groups have been gunned down in shoot-outs and 28 guns and hundreds of ammunitions were seized. It is hoped that the surrender or capture of the separatists in East Timor will help improve the promotion and protection of human rights in the territory. Violations of the right to life by the separatists, such as occurred on 1 September 1995 when they raided a village in Baucau and killed three villagers, namely M. Adil, Martinho and Marito Ximenes, will hopefully be curtailed as a result."

Annex II

INFORMATION PROVIDED BY THE PORTUGUESE GOVERNMENT

On 5 July 1995 the Permanent Mission of Portugal to the United Nations addressed a note verbale to the Secretary-General which was circulated to the General Assembly as document A/50/214 and Corr.1.

On 7 December 1995 the Ministry for Foreign Affairs of Portugal issued a communiqué on behalf of the Portuguese Government, on the occasion of "the twentieth anniversary of the invasion of East Timor", reading as follows:

> "Communiqué issued by the Ministry of Foreign Affairs on behalf of the Government of Portugal, on the twentieth anniversary of the invasion of East Timor.
>
> "Twenty years have passed since the armed forces of the Republic of Indonesia illegally invaded and occupied the Non-Self-Governing Territory of East Timor, thus interrupting its process of decolonization and brutally thwarting the wishes of its people for freedom and self-determination.
>
> Despite the subsequent resolutions adopted by the Security Council and General Assembly of the United Nations with the aim of restoring international legality, ensuring the withdrawal of the invader and rejecting the invader's alleged acts of self-determination, the illegal occupation of East Timor is continuing to this day, in persistent defiance of the fundamental values and principles governing relations between nations and peoples.
>
> It is above all to the enormous sacrifices made by the Timorese people that we owe the maintenance of the question of East Timor on the international agenda and its growing impact on world public opinion, notwithstanding the time that has elapsed and the enormous disproportion of forces. This twentieth anniversary has been commemorated, after all, in circumstances which demonstrate that force and repression have not succeeded and are not succeeding in resolving the problem and that the Timorese question has withstood the difficult test of time and is more alive than ever. The world in 1995 is no longer the same as in 1975, and the violence which is being inflicted on the population of East Timor is an unjustifiable and inhuman anachronism that urgently needs to be eliminated.
>
> The Government of Portugal, mindful of this sad date, reaffirms its commitment to make determined efforts, in exercise of its responsibilities as administering power of the Territory, to arrive at a solution to this question which fully respects the legitimate rights of the Timorese people, including the right freely to choose its political destiny. The harrowing experience of these last two decades clearly shows that this aspiration lives on in the hearts of the Timorese and that, unless it is satisfied, there will be no peace in East Timor."

Annex III

MATERIAL PROVIDED BY NON-GOVERNMENTAL SOURCES

During the period covered by the present report (February 1995 to February 1996) the Secretariat continued to receive a large number of communications and petitions from international and regional non-governmental organizations and from individuals around the world, containing information on alleged human rights violations in East Timor as well as appeals for the release of political prisoners, and in particular of Xanana Gusmao, and for a permanent United Nations presence in East Timor. The non-governmental organizations which provided such information included Amnesty International, "Tapol-The Indonesia Human Rights Campaign" and "CNRM East Timor - National Council of Maubere Resistance".

Information provided by Amnesty International

As in previous years, Amnesty International provided the Secretariat with several reports dedicated to describing and analysing the situation in East Timor, as well as with numerous communications on specific cases of alleged arrests, torture and extrajudicial executions.

In July 1995 Amnesty International issued a report entitled "East Timor - Twenty years of violations" which contained the text of a statement about human rights in East Timor delivered by a representative of Amnesty International on 11 July 1995 before the United Nations Special Committee on Decolonization. It also provided detailed evidence of human rights violations committed during the period July 1994 to July 1995, and in particular about the unrest in January and February 1995 following the killing of six unarmed men in the village of Gariana, by members of the Indonesian regional military command from Liquiza (an incident known as the "Liquiza killings"), which allegedly gave rise to a wave of arbitrary arrests, torture and beatings, and dozens of political trials.

In December 1995 Amnesty International published a report entitled "Women in Indonesia and East Timor - Standing against repression" which focused on alleged human rights violations of women in Indonesia and in East Timor, containing inter alia, chapters on political imprisonment of women, torture and ill-treatment and impunity. According to that report women in East Timor could be subjected to torture in the form of rape or sexual abuse. Victims of such practices included women suspected of being political opponents, wives and sisters of suspected political opponents, and women detained on criminal charges. It was also alleged that in practice, human rights violations were seldom properly investigated, and few of those responsible were brought to justice. The report concluded that one of the primary causes of impunity in East Timor was that investigations into alleged violations were nearly always conducted by the security forces, and usually by members of the very unit believed to be responsible for the violations.

In January 1996 Amnesty International published a document entitled "1996 UN Commission on Human Rights - A call for action" listing several situations which, according to Amnesty International, deserve to be considered with priority at the present session of the Commission. These include

Indonesia and East Timor. It was alleged that during 1995 violations such as imprisonment of peaceful critics after unfair trials, torture and ill-treatment of political and criminal detainees, and disappearances and extrajudicial executions of political and criminal suspects continued to occur in East Timor. Thus, in 1995 alone, at least 13 civilians were thought to have been extrajudicially executed in East Timor. Amnesty International considered that the main factors contributing to human rights violations in Indonesia and East Timor were a lack of political will to ease restrictions on civil and political rights, the arbitrary use of power by the security forces and virtual impunity for members of the security forces who commit human rights violations.

Other material provided by non-governmental sources

Other information furnished by Amnesty International as well as by the regional non-governmental organizations referred to at the beginning of the present annex, and the numerous petitions received in 1995 from individuals throughout the world, described many incidents which allegedly occurred in East Timor, or which involved East Timorese civilians in Jakarta and in other localities in Indonesia. These included a large number of protests and demonstrations. It was alleged that following such protests, which were sometimes described as violent, many participants were arrested and were subsequently subjected to beatings or to other forms of ill-treatment.